*** THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY**

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+ WRIT PETITION NO : 13436 of 2000

% 21-06-2005

Mallina Venkatarao .. PETITIONERS

VS.

$ The District Collector, West Godavari District. & oths ..RESPONDENTS

! COUNSEL FOR PETITIONER: Mr.P.R.K.Amarendra Kumar

^ COUNSEL FOR THE RESPONDENTS: Government Pleader for Social Welfare

< Gist:

> Head Note:

? CITATIONS:

1. 2000(4) ALD 443 (DB)

2. 2002(4) ALT 669 (DB)

3. 2003(3) ALT 453

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO : 13436 of 2000

Between:

Mallina Venkatarao, S/o Subba Rao

Aged 50 years R/o Nutiramannapalem,

Buttaigudem Mandal, W.G.Dist.

..... PETITIONER

AND

1. The District Collector, West Godavari Dist., Eluru.
2. The Special Deputy Collector, Tribal Welfare, K.R.Puram.
3. Mandal Revenue Officer, Buttaigudem Mandal, W.G.Dist.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue order, direction more particularly one in the nature of writ of mandamus declaring the orders of the Special Deputy Collector (TW) K.R.Puram in S.R.No.58/99 dated 30-12-1999 as illegal, arbitrary without having any power under the provisions of A.P.S.A.L.T.Regulations 1/59 as amended by 1/70 and set aside the same and to pass such further order or orders as are necessary in the interest of justice.

Counsel for the Petitioner: MR.P.R.K.AMERANDRA KUMAR

Counsel for the Respondent No.1 to 3: GP FOR SOCIAL WELFARE

The Court made the following :

O R D E R :

1. This writ petition is filed by Mallina Venkatrao with a prayer to issue a direction one in the nature of Writ of Mandamus declaring the order of the Special Deputy Collector (TW), K.R.Puram in S.R.No.58/99 dated 30-12-1999 as illegal, arbitrary without having any power under the provisions of A.P.Scheduled Areas Land Transfer Regulation 1/59 as amended by 1/70 (for short the Regulation).

2. It is stated in the writ affidavit that the petitioner is in possession and enjoyment of land to an extent of Ac.1.57 cents in R.S.No.75 of Koyarajahmundry village, Buttaigudem Mandal, West Godavari District. His father Subba Rao along with others purchased lands including the land in R.S.No.75 from Chebokula Subbanna under a registered sale deed No.1275 dated 19.8.1960. The said Chebokula Subbanna purchased the lands through a registered sale deed dated 8.6.1952 from Chapala Dharmaraju who is a non-tribal. After the death of Subba Rao, the petitioner and his brother Janardhana Rao have been in continuous possession and enjoyment of the land in question. After commencement of the Regulation, Special Deputy Collector, Tribal Welfare-II, K.R.Puram has filed a complaint against the petitioner and his brother Janardhana Rao in S.R.No.776 of 1990 before the Court of Special Deputy Collector (TW), K.R.Puram-R2 herein under sec 3(2)(a) of the Regulation seeking declaration that the sale transaction as null and void and for eviction of the petitioner and his brother from the scheduled land and assign the same to landless poor. A notice in Form E was issued to the petitioner and his brother on 25.3.1991. In compliance with the said notice the petitioner appeared

before R2 and produced the necessary documents evidencing the purchase of the land by his father and got himself examined as RW.1. The Special Deputy Collector, Tribal Welfare, K.R.Puram-R2 herein, on considering the evidence brought on record, came to the conclusion that the schedule mentioned lands were never held by any tribal at any point of time and therefore there was no contravention of the provisions of the Regulation and thereby disallowed the claim filed by the Special Deputy Tahsildar, Tribal Welfare-II, K.R.Puram by an order dated 5.6.1991 in S.R.No.776/90. The Special Deputy Tahsildar, Tribal Welfare-II, K.R.Puram did not chose to carry the matter in an appeal and thereby the order passed by R2 herein attained finality. While so, the Mandal Revenue Officer-3rd respondent in his proceedings dated 8.6.99 directed Special Deputy Tahsildar (TW)II, R.K.Puram to file a complaint against the petitioner in respect of the self same land under the provisions of the Regulation. R2 herein initiated the proceedings in S.R.No.58/99 and passed an exparte order of ejectment of the petitioner from the schedule land. R2 herein has passed exparte orders of ejectment in more than 200 cases and one of the land owners has filed a criminal case against the then Special Deputy Collector, Tribal Welfare, K.R.Puram on the ground that he signed on the ejectment orders after his retirement from service and the same is pending investigation. After registration of the crime against the then Special Deputy Collector; the District Collector, West Godavari District seized the records and recorded a statement from the staff of the concerned office. R2 herein is not empowered to review the orders passed under the Regulation since there is no provision enabling him to review his own orders. A similar question came up in W.A.No.1595 of 1999 wherein a Division Bench of our High Court held that the provisions of the Regulation do not empower the Special Deputy Collector, Tribal Welfare, K.R.Puram to review his earlier order. Thus, the impugned order is illegal and arbitrary and the same is to be declared as null and void.

3. Heard Sri.P.R.K.Amarendra Kumar, learned counsel appearing for writ petitioner and the Government Pleader for Social Welfare appearing on behalf of respondents 1 to 3.

4. Learned counsel for the petitioner submits that when once the Special Deputy

Collector, Tribal Welfare, K.R.Puram concluded the proceedings initiated against the petitioners holding that the purchase of lands by the father of the petitioner was not in contravention of the Regulation, it was not open to the self same authority to entertain the proceedings once again. In other words he submits that the Regulation does not empower R2 to review his own orders which attained finality and therefore the impugned order reviewing the earlier order dated 5.6.91 passed in S.R.No.776/90 suffers from inherent lack of jurisdiction and thereby the impugned order is to be declared as null and void. He placed reliance on a Division Bench judgment of our High Court in C.RAMALINGA RAJU v. DISTRICT COLLECTOR, ELURU, W.G.DIST. wherein it has been held that the order passed under the Regulation cannot be reviewed in the absence of any enabling provision in the said Regulation.

5. Learned Government Pleader for Social Welfare appearing for respondents 1 to 3 submits that the principle of resjudicata has no application to the facts of the case on hand and therefore there is no bar for the 2nd respondent to initiate proceedings under Regulation for restoration of the land to the real tribal and therefore the impugned order is legal and proper. He would contend that since the provisions of the Regulation provide a statutory remedy to the petitioner to challenge the impugned order the writ petition filed by the petitioner without exhausting the statutory remedy is liable to be dismissed inlimini.

6. Before dwelling on the rival contentions I make myself clear that the Special Deputy Collector (TW), K.R.Puram-2nd respondent initiated proceedings on the complaint filed by Special Deputy Tahsildar 9TW).No.II, K.R.Puram for ejectment of the writ petitioner and his brother M.Jagannadha Rao on the ground that sale of lands are in contravention of Sec.3(2)(a) of the Regulation. A notice in Form E under Rules 7(2) of A.P.S.A.L.T.Rules, 1969 was issued to the writ petitioner and his brother M.Jagannadha Rao on 20-3-1991 calling upon them to explain as to why they should not be ejected from the schedule lands and restore the same to the original tribal or their legal heirs. In pursuance of the show cause notice, the writ petitioner entered appearance before Special Deputy Collector (TW), K.R.Puram-2nd respondent and placed on record both ocular and documentary evidence. The

2nd respondent considered the evidence brought on record and recorded a finding that the schedule mentioned lands were never held by tribals and there was no contravention of the Regulation and thereby dismissed the claim of Special Deputy Tahsildar, Tribal Welfare-II, K.R.Puram by an order dated 5.9.1991. For better appreciation I may refer the relevant portion of the order dated 5.9.1991 passed in S.R.776 of 1990 and it is thus:

" I have examined the evidence adduced and the records made available before me. As per Ex.R1 which is a copy of the sale deed dated 19.8.1960, the deponent's father got the lands from non-tribals and since then the lands are under the possession and enjoyment of the deponent's family. As seen from Ex.R2 which is a copy of the EC for the period from 1916 to 1959, there were no further transactions during the said period. As seen from Ex.R.3, which is a copy of the sale deed dated 10-7-1936, the lands under reference purchased by non-tribals from the Koyas namely Sri Made Veeraswamy and Venkataswamy after obtaining the permission from the Asst.Agent, Bhadrachalam in his letter L.Dis.3400/35 dated 20-10-1935. And it is found that the schedule mentioned lands were never held by tribals. In view of the facts, I conclude that there is no contravention of the Provisions of the A.P.S.A.L.T.Regulations 1/59 as amended by 1/70 read with A.T.I. and L.T.A., 1917."

7. The subject matter of the lands covered under the order dated 5.6.91 passed in S.R.776/90 are as follows:

Name of the village: Koyarajahmundry

Name of the Mandal: Buttaigudem

S.R.NO. R.S.NO. Extent Classi- Whether the claim is

Ac.Cts fication allowed or not

776/90 68 pt 6.57 GD

75 pt 1.57 GD Claim is allowed

74/2 pt 0.90 GD

8. The Special Deputy Tahsildar, Tribal Welfare-II, K.R.Puram did not choose to question the order dated 5.6.91 in an appeal and thereby the order of 2nd respondent reached finality. After lapse of eight years, the 2nd respondent initiated proceedings suo motu to review the order passed in SR.No.776/90 and issued notice to the writ petitioner. On review the 2nd respondent set aside the earlier order and ordered for ejectment of the petitioner from the scheduled land and restore the same to a tribal claimant, if any, available on due enquiry. The order passed by the 2nd respondent on review in SR.No.58/99 reads as follows:

" That the respondent herein since failed to attend this court and failed to establish his interests on the petition schedule land inspite of notices served on him he is set exparte.

That in terms of section 3(2)(a)(b) the respondent is to be ejected from the petition schedule lands and the land be restored to a tribal claimant, if any, available on due enquiry; and

That the Mandal Revenue officer, Buttaigudem is hereby required to eject the respondent his family members or her men or agents or kith and kin whomsoever is bound by the decree enclosed and restore the same land to the tribal interested or any landless poor tribe at his discretion and report compliance."

9. Transfer of lands situate within the scheduled areas by a non-Tribal in favour of another non-Tribal is absolutely null and void under the provisions of sub-section (1) of Section 3 of the Regulation. Even the transferee-non-Tribal is also not entitled to retain the property. Sub-sections (2) and (3) of Section 3 of the Regulation contemplates initiation of the proceedings by the Agent to the Government or any prescribed officer to restore the property to the transferor or the heirs when they come to know that lands are transferred in breach of the bar contained in sub-section (1) of Section 3 of the Regulation.

10. A question came up for consideration before a Division Bench of this court in SPECIAL DEPUTY COLLECTOR (TRIBAL WELFARE) v. DATLA VENKAPATHI RAJU as to whether the principle of resjudicata has any application to the

proceedings initiated under the provisions of the Regulation. It has been held by the Division Bench that the principle of resjudicata is not applicable when the parties to the earlier proceedings and the present proceedings are different.

11. It is also contended by learned counsel for the petitioner that there was no fresh material before the 2nd respondent to review the order passed in SR.No.776/90 and therefore the impugned order has been passed by the 2nd respondent without application of mind and the same is not sustainable under law. He placed reliance on (1) cited decision. In the cited decision it has been held that an order passed under the Regulation cannot be reviewed in the absence of any enabling provision in the Regulations.

12. Admittedly, the 2nd respondent has taken up the review of the earlier order dated 5.6.1991 passed in SR.776 OF 1990 suo motu. There was no fresh material placed before him to initiate proceedings suo motu for review of earlier order. The order passed in SR.No.776/90 attained finality since Special Deputy Tahsildar, Tribal Welfare-II, K.R.Puram did not chose to carry the matter in an appeal. Unless there is some fresh material, as held by the Division Bench of our High Court in (2) cited decision, the subsequent proceedings reviewing the order passed in earlier proceedings are incompetent.

13. It is contended by the learned Government Pleader for Social Welfare that the writ petitioner has a statutory remedy of an appeal under the provisions of Regulations and therefore this writ does not lie. The fact that there exits remedy by way of an appeal could not come in the way of this court entertaining the writ petition for the reason that the orders under challenge suffered from non-application of mind as there is lack of competency vide decision of this court in N.DURGA RAO v. SPECIAL DEPUTY COLLECTOR (TRIBAL WELFARE).

14. For the foregoing reasons, this writ petition is allowed setting aside the

impugned orders of the Special Deputy Collector (TW), K.R.Puram in S.R.No.58/99 dated 30-12-1999.

Dated: 21st June, 2005. (B.Seshasayana Reddy,J)

Tnb

LR COPY TO BE MARKED

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Mr.Justice Bilal Nazki, the Acting Chief Justice on this day Twenty First June Two Thousand Five.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

One fair copy to the Honourable Sri Justice

B.Seshasayana Reddy (for his Lordships kind perusal)

To

1. The District Collector, West Godavari District, Eluru.
2. The Special Deputy Collector, Tribal Welfare, K.R.Puram.
3. The Mandal Revenue Officer, Buttaigudem Mandal, W.G.District.
4. 8 LR COPIES.
5. **2 copies to Government Pleader for Social Welfare, High Court Buildings, Hyderbad. (OUT)**
6. **2 CD copies**
7. **1 CC to MR.AMARENDRA KUMAR**
8. **The Under Secretary, Union of India, Ministry of law, Justice & Company Affairs, New Delhi.**
9. **The Secretary, A.P. Advocates' Association library, High Court buildings, Hyderabad.**